

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

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## NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Rule 71.1)

Applicant's or agent's file reference 030304pct	Date of mailing (day/month/year)      06.08.2004	
International application No. PCT/NL 03/00272	International filing date (day/month/year) 10.04.2003	Priority date (day/month/year) 13.04.2002
Applicant PANALYTICAL B.V. et al.	<b>IMPORTANT NOTIFICATION</b>	

G23758W0

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

#### 4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Anne Witzig, A Tel. +49 89 2399-5937	
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**PATENT COOPERATION TREATY**  
**PCT**  
**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**  
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 030304pct	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/NL 03/00272	International filing date (day/month/year) 10.04.2003	Priority date (day/month/year) 13.04.2002
International Patent Classification (IPC) or both national classification and IPC G01N23/00		
Applicant PANALYTICAL B.V. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
  - This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 3 sheets.

3. This report contains indications relating to the following items:

- I  Basis of the opinion
- II  Priority
- III  Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV  Lack of unity of invention
- V  Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI  Certain documents cited
- VII  Certain defects in the international application
- VIII  Certain observations on the international application

Date of submission of the demand  08.11.2003	Date of completion of this report  06.08.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Strohmayer, B Telephone No. +49 89 2399-2669



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/NL 03/00272

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-15 as originally filed

**Claims, Numbers**

1-12 received on 04.05.2004 with letter of 30.04.2004

**Drawings, Sheets**

1-5 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/NL 03/00272

5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes:	Claims	1-12
	No:	Claims	
Inventive step (IS)	Yes:	Claims	2,9-12
	No:	Claims	1,3-8
Industrial applicability (IA)	Yes:	Claims	1-12
	No:	Claims	

2. Citations and explanations

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/NL03/00272

- D1: NOMA ET AL.: 'Surface-sensitive X-ray fluorescence and diffraction analysis with grazing-exit geometry' X-RAY SPECTROMETRY, vol. 28, 1999, pages 433-439
- D2: NOMA ET AL.: 'Micro X-ray diffraction analysis of thin films using grazing-exit conditions' JOURNAL OF SYNCHROTRON RADIATION, vol. 5, 1998, pages 902-904
- D4: US-A-5 684 857 (DE BOKX PIETER K) 4 November 1997 (1997-11-04)

**Section V**

**1.1. The subject matter of claim 1 is not inventive:**

D1 discloses all features of claim 1 (see chapter "GRAZING EXIT X-RAY DIFFRACTION) except the following novel features:

- 1) the thin layer of the sample is "substantially single crystal"
- 2) the collimator is a slit between the X-ray source and the sample stage

re 1)

The expression "substantially" renders this feature unclear (ISPE Guidelines C-5.38), such that even novelty of this feature is doubtful. It is in any event obvious for the skilled person to try to adapt the grazing exit geometry, which is disclosed in D1 for polycrystalline thin films, also for monocrystalline thin films by conventional measures like rotating the sample, increasing the wavelength range or divergence of the incident beam etc..

re 2)

The skilled person chooses the collimator (for example two slits as in D4 or a single slit with an appropriate source) according to circumstances without the exercise of inventive skill.

Since both features are independent from each other and since both features are obvious, the subject matter of claim 1 is obvious as a whole.

1.2. The subject matter of independent use claim 1 defines merely the use of the device of claim 1 without additional novel features and is thus likewise obvious.

2. The subject matter of independent method claim 9 appears to be inventive:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/NL03/00272

D1 discloses all features of claim 9 except the following novel features:

- 1) the thin layer of the sample is "substantially single crystal"
- 2) the incident beam is "created without a monochromator", i.e polychromatic.

Although feature 1) alone is unclear and obvious for reasons put forward in paragraph 1.1. above, the subject matter of claim 9 is inventive, since both features 1 and 2 are interdependent, such that the skilled person needs two interrelated steps, which implies inventive activity.

It is however to be noted that feature 2) was not contained in any originally filed claim, but only mentioned in the description (p.5,I.31ff) and was thus eventually not searched. Thus an additional search might become necessary in the regional phase. The positive statement with respect to claim 9 (and claim 2 below) has to be seen with this proviso.

3.1. The subject matters of dependent claims 2 and 10-12 are likewise new and inventive.

3.2. The subject matters of dependent claims 3 to 7 are not inventive, since the additional features defined therein are either disclosed in or obvious from D1.

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DT01 Rec'd PCT/US 12 OCT 2004

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## CLAIMS:

1. An X-ray apparatus for high-resolution X-ray diffraction of thin layers of single crystal, comprising:
  - 5 a sample stage (8) holding a sample (16) having a substantially single crystal thin layer (18) at a front face (12) with the front face (12) oriented substantially normally to a predetermined normal direction (14);
    - a means (4,6) for generating a collimated beam of X-rays (11) at a predetermined target location (15) on the sample stage at an angle of between
    - 10 0° and 60° to the normal direction, the beam having an angular divergence at the sample stage in the range 0.01° to 0.20°; and
    - 15 an X-ray detector (10) arranged laterally of the sample stage for detecting X-rays scattered by the sample (16) to a predetermined range of angles to the normal direction (14), the angles in the predetermined range being in the range from 80° to 90°,
  - wherein the means for generating a collimated beam of X-rays comprises an X-ray source (4) and a slit (6) between the X-ray source and the sample stage.
  - 20 2. An X-ray apparatus according to claim 1 wherein the means for generating a collimated beam does not include a monochromator.
  - 25 3. An X-ray apparatus according to claim 1 or 2 wherein the X-ray detector (10) has a linear resolution in the normal direction (14) of less than 0.002 times the distance from the X-ray detector to the predetermined target location.
  - 30 4. X-ray apparatus according to claim 1, 2 or 3 wherein the X-ray source (3) has a dimension of no more than 0.2mm in the direction normal to the beam in the plane containing the normal, the incident beam and the scattered X-rays.

5. An X-ray apparatus according to any preceding claim wherein the X-ray detector (10) is an elongate X-ray detector extending in a direction parallel to the normal direction (14) for detecting in parallel X-rays diffracted by the sample as a function of distance along the normal direction and hence over 5 a predetermined range of angles to the normal direction.
6. An X-ray apparatus according to any preceding claim wherein the position sensitive X-ray detector (10) is a solid state detector.
- 10 7. An X-ray apparatus according to any preceding claim wherein the substantially single crystal thin layer (18) is a semiconductor layer.
- 15 8. Use of an X-ray apparatus according to any preceding claim to measure the sample (16) the sample (16) being mounted on the sample stage (8) and oriented to diffract the collimated X-ray beam (11) onto the position sensitive X-ray detector (10).
- 20 9. A method of high-resolution X-ray diffraction; comprising: providing a sample stage and an X-ray detector located laterally of the sample stage;
- 25 mounting a sample having a substantially single crystal thin layer material extending in a plane on the sample stage; directing an incident collimated beam of x-rays created without a monochromator onto the sample at an angle of 0° to 60° to the normal to the plane; and
- 30 measuring with the X-ray detector the X-rays diffracted by the sample to a range of angles in the range 80° to 90° to the normal to the plane.
10. A method according to claim 9 wherein the incident beam has an angular divergence in the range 0.01° to 0.20°.

11. A method according to claim 9 or 10 wherein the incident beam of X-rays is in a direction from 0° to 40° to the normal to the plane.

12. A method according to any of claims 9 to 11 wherein the step of  
5 measuring the X-rays diffracted by the sample (16) includes recording the intensity of X-rays incident on the detector (10) simultaneously at a number of locations along the length of the detector.